

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH I. DEANE

Plaintiff,

vs.

PACIFIC FINANCIAL GROUP, Inc., a
Washington corporation, MEGAN P. MEADE,
an unmarried woman; NICOLAS B. SCALZO,
an unmarried man; JAMES C. MCCLENDON,
a married man; JAMES C. MCCLENDON and
JOAN A. MCCLENDON, a marital community;
GAETAN T. SCALZO, a married man;
GAETAN T. SCALZO and SHERRIE
SCALZO, a marital community,

Defendants.

NO. 2:19-cv-00722-MJP

AMENDED JOINT PRETRIAL ORDER

A. JURISDICTION

The parties agree that this Court has jurisdiction over these matters by virtue of 28 U.S.C. § 1332(a) and § 2201(a).

B. CLAIMS AND DEFENSES

Plaintiff will pursue at trial the following claims:

1. Breach of contract;
2. Willful withholding of wages in violation of RCW 49.52.050;
3. Accounting to assure that the appropriate methodology is employed to accurately and precisely compute the amounts of plaintiff's termination payments;

4. Declaratory judgment regarding the proper definition of the term “procured.”

Defendants will pursue at trial the following affirmative defenses and counterclaims:

Affirmative Defenses

1. Plaintiff’s claims and/or damages are barred in whole or in part because Defendants acted in good faith and with proper justification at all relevant times;

2. Plaintiff’s claims and/or damages are barred in whole or in part because all of Defendants’ actions with respect to Plaintiff were taken solely for legitimate, business-related reasons;

3. Plaintiff’s employment was at-will, and any changes in Plaintiff’s employment, including the termination of his employment, were for legitimate and lawful reasons; and Plaintiff’s claims and/or damages may be barred in whole on the basis of the doctrine of after-acquired evidence.

Defendants’ Counterclaims

1. Breach of contract, non-solicitation;
2. Breach of contract, duty of loyalty and confidentiality; and
3. Constructive resignation.

C. ADMITTED FACTS

1. Kenneth I. Deane, born in 1975, received a B.S. in Business Administration from Alfred University in New York in 1998. Upon graduation he was hired by ICON Capital Corp. advancing from a management trainee to Vice-President of Operations within two years. In 2002 he transferred to ICON’s securities division, where he was employed as a wholesale salesperson until his employment was terminated in 2007.

2. TPFPG, a boutique investment firm providing money management and investment advice, was founded in 1984 by its director James McClendon. Megan Meade, now Co-CEO, was president of TPFPG when it hired Deane. In 2017, Meade, McClendon, Nick Scalzo and

1 Gaetan Scalzo merged separate business enterprises and formed Pacific Holdings Group, LLC
2 of which TPFPG is one of several operating companies. Nick Scalzo is currently a Co-CEO along
3 with Meade of TPFPG.

4 3. Deane was hired by TPFPG as a sales representative on or about October 1, 2007.
5 The relationship was memorialized by a written employment agreement effective April 2008.

6 4. The execution of the employment agreement was preceded by negotiations
7 between Deane and TPFPG.

8 5. The employment agreement contains a provision at section 9 that sets forth the
9 reasons for "Termination."

10 9.1 This Agreement shall terminate at any time by mutual
11 agreement of the parties.

12 9.2 This Agreement shall terminate in the event of the death or
13 permanent disability of the Employee. The term "permanent
14 disability" shall mean an inability to perform the duties set forth in
15 paragraph 1 of this Agreement because of illness or physical or
16 mental disability for a period of six (6) months in any twelve (12)
17 month period.

18 9.3 Upon fourteen (14) days notice to the other party.

19 9.4 Employer may terminate this Agreement at any time without
20 prior notice with "Cause." Cause shall include, without limitation,
21 the occurrence of any of the following:

22 1. Repeated failure or refusal to carry out the reasonable
23 directions of the Employer's Board of Directors, which directions
24 are consistent with the Employee's duties set forth herein.

25 2. The willful engaging by Employee in misconduct which
26 is injurious to the Employer, monetarily or otherwise.

1. Commitment of a felony or a crime involving moral
turpitude.

4. Misuse of alcohol or controlled substances; intentional
misrepresentation, deception, fraud, or dishonesty.

1 6. The employment agreement contains a provision at section 10 entitled
2 “Termination Payments.”
3

4 10.1 In the event of termination of the Employee’s employment,
5 for whatever reason or for no reason, the Employer shall pay to the
6 Employee all compensation earned but not paid to the Employee
7 prior to the date of such termination.

8 10.2 If Employer terminates Employee’s employment without
9 cause or for any other reason not listed in Section 9.4 above, then
10 Employee shall be paid four (4) quarterly termination payments for
11 each year of employment with the Employer, up to a maximum of
12 sixteen (16) quarterly payments following the termination of
13 Employee’s employment. Partial years of employment shall be
14 prorated on a quarterly basis. The amount of the quarterly
15 termination payments shall be equal to ten percent (10%) of the
16 quarterly management fees earned and collected by Employer from
17 investor clients procured by the Employee in the Territory during
18 Employee’s employment, minus broker/dealer allowances and
19 minus an amount equal to twenty percent (20%) of regional
20 Marketing Expenses expended in the Territory. Payment of the
21 quarterly termination payments shall be paid to Employee at the
22 same interval as payments of commissions were made to Employee
23 immediately prior to termination of Employee’s employment. If
24 Employee is terminated for cause, Employee shall not be entitled to
25 receive any of the foregoing quarterly termination payments.
26

7. The employment agreement contains a provision at section 4 entitled “Duties.”

19 The Employee is engaged hereunder to render services as a sales
20 representative for Employer’s investment advisory and money
21 management services. Employee shall conduct his sales activities
22 in the state of Alabama, Arkansas, Connecticut, Delaware, District
23 of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana,
24 Maine, Massachusetts, Maryland, Michigan, Mississippi, New
25 Hampshire, New Jersey, New York, North Carolina, Ohio,
26 Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont,
Virginia, and West Virginia (“Territory”). Employee may conduct
sales activities outside of the Territory with the prior written consent
of the Employer. Employer reserves the right to modify the scope
of the Territory during the term of Employee’s employment with
Employer. If the Employer modifies the scope of the Territory and

1 such modification results in an overall net reduction of Employee's
2 income, then Employee shall continue to be paid quarterly
3 commission payments in an amount equal to ten percent (10%) of
4 the quarterly management fees earned and collected by the
5 Employer from investor clients procured by the Employee in the
6 reassigned Territory, minus broker/dealer allowances and minus an
7 amount equal to twenty percent (20%) of regional Marketing
8 Expenses expended in the reassigned Territory. Employee shall be
9 paid four (4) quarterly commission payments as provided herein for
10 each year of employment up to a maximum of sixteen (16) quarterly
11 payments following the Employer's modification if the scope of the
12 Territory. Partial years of employment shall be prorated on a
13 quarterly basis.

14 8. The employment agreement contains a provision at section 5 entitled "Devotion
15 of Full Time to Employment."

16 The Employee shall devote his full time, energy, and attention to the
17 performance of his duties for the Employer; provided, however, that
18 nothing herein contained shall prohibit the Employee from
19 participating in other activities during his own time to the extent that
20 such activities do not adversely affect the interest of the Employer.

21 9. The employment agreement contains a provision at section 11 entitled
22 "Confidentiality."

23 Employee recognizes and acknowledges that during the course of
24 Employee's employment, Employee shall have access to certain
25 information not generally known to the public relating to the
26 business of Employer, which may include, without limitation,
investor client lists, sales and business information, investment
methods and strategies, projections, research work, trade secrets,
source codes, and software programs owned by Employer, corporate
marketing plans and procedures, or any other proprietary or
confidential matter (collectively "Confidential Information").
Employee recognizes and acknowledges that this Confidential
Information constitutes a valuable, special, and unique asset of
Employer, access to and knowledge of which are essential to the
performance of Employee's duties. Employee acknowledges and
agrees that all such Confidential Information, including, without
limitation, that which Employee conceives or develops, either alone
or with others, at any time during his employment by Employer, is
and shall remain the exclusive property of Employer and upon

1 termination of Employee's employment, no tangible form of such
2 information or copies shall be retained by Employee in any form.
3 Employee further recognizes, acknowledges, and agrees that in
4 order to enable Employer to perform services for third parties, such
5 third parties may furnish to it Confidential Information concerning
6 their business affairs, property, methods of operating, or other data
7 that the good will afforded to Employer depends upon it and its
8 Employees preserving the confidentiality of such information, and
9 that such information shall be treated as Confidential information of
10 Employer for all purposes under this Agreement.

11 10. The employment agreement contains a provision at section 12 entitled "Non-
12 solicitation."

13 In view of the unique value to Employer of Employee's services, the
14 scope of Employer's business, the Employee's ability to gain
15 employment, using his existing skills, with businesses directly or
16 indirectly competing with Employer's business, and because of the
17 confidential information to be obtained by or disclosed to Employer,
18 Employer agrees to abide and by bound by the restrictions and
19 prohibitions of this Section 12, which restrictions are intended by
20 the parties to extend to any and all activities of the Employee,
21 whether as an independent contractor, partner, or joint venturer, or
22 as an officer, director, stockholder, agent, or employee for any
23 person, firm, partnership, corporation, or other entity, or otherwise.

24 12.1 **Prohibition Against Solicitation.** During the term of the
25 Employee's employment, whether pursuant to this Agreement or
26 otherwise, and for a period of twelve (12) months following the
termination or expiration of this Agreement or any extension
thereto, or following the termination of his employment with the
Employer, regardless of the reason for such termination, the
Employee shall not, without the prior written consent of Employer,
(1) directly or indirectly, solicit the services of any the employees or
investor clients of the Employer with the purpose of causing such
persons to terminate their employment or business relationship with
the Employer, as the case may be, (2) cause, induce, or attempt to
cause or induce any of Employer's custodians, consultants, or
referral sources or any other business relation of Employer to cease
doing business with Employer or in any way interfere with the
relationship between Employer and its custodians, consultants, and
referral sources, or (3) directly or indirectly, engage, employ, or
otherwise hire any of the employees of the Employer.

1 **12.2 Automatic Extension of Restricted Time Period.** The
 2 person of time during which the Employee is prohibited from
 3 engaging in certain business practices pursuant to Section 12.1 shall
 4 be extended by the length of time during which the Employee is
 5 found to be in breach of such covenants by the court.

6 **12.3 Restrictive Covenants as Essential Elements of this**
 7 **Agreement.** It is understood by and between the parties hereto that
 8 the foregoing restrictive covenants set forth in Section 12.1 are
 9 essential elements of this Agreement, and that, but for the agreement
 10 of the Employee to comply with such covenants, the Employer
 11 would not have agreed to enter into this Agreement. Such covenants
 12 by the Employee shall be construed as agreements independent of
 13 any other provision in this Agreement. The existence of any claim
 14 or cause of action of the Employee against the Employer, whether
 15 predicated on this Agreement, or otherwise, shall not constitute a
 16 defense to the enforcement by the Employer of such covenants.

17 **12.4 Divisibility of Covenants; Survivability**

18 1. It is agreed by the Employer and the Employee that if any portion
 19 of the covenants set forth in this Section 12 are held to be invalid,
 20 unreasonable, arbitrary, or against public policy, then such portion
 21 of such covenants shall be considered divisible. The parties agree
 22 that, if any court of competent jurisdiction determines any provision
 23 of this Section 12 to be invalid, unreasonable, arbitrary or against
 24 public policy, a lesser reasonable restriction may be enforced against
 25 the Employee. The Employer and the Employee agree that the
 26 foregoing covenants are appropriate and reasonable when
 considered in light of the nature and extent of the business by the
 Employer.

2 2. The restrictive covenants and the duties, obligations and
 3 responsibilities covenants of the Employee herein contained shall be
 4 deemed independent and separable from the rest of this Agreement
 5 and shall survive the execution and any termination or expiration
 6 hereof; and in the event of termination or expiration hereof shall
 7 continue to bind the parties hereto and continue in full force and
 8 effect until each and every obligation herein shall have been fully
 9 performed.

10 11. Beginning in 2014, Regional Wholesalers were hired in Deane's division by
 11 TPGF.

1 12. To accommodate changes in how TPFPG business was conducted, Deane's
2 employment agreement was amended. The last amendment became effective January 1, 2018.

3 13. Beginning in the latter part of 2017, Meade and Nick Scalzo began discussions
4 with Deane about changes to his role at TPFPG. On June 15, 2018, Meade and Scalzo sent an
5 email to Deane and Sylvain Templeman.

6 14. Between June 2018 and December 2018, Deane and TPFPG attempted to
7 renegotiate Deane's duties and compensation. Deane remained a TPFPG employee during that
8 time, receiving his commissions and benefits and was still responsible for meeting his
9 performance obligations under his employment agreement.

10 15. On October 30, 2018, Deane emailed Meade and Nick Scalzo regarding "savings."
11 On November 2, 2018, Meade and Nick Scalzo emailed Deane directing him to set up a time to
12 meet them in the Newport Beach office the week of November 12.

13 16. On November 14, 2018, Meade emailed Deane a letter from her and Nick Scalzo
14 containing a proposal for a new position. Later that same day, Deane responded and said he
15 was rejecting the proposal.

16 17. After Deane's response to TPFPG's offer of November 14, Meade wrote on
17 November 15 that Deane "take a month off and go explore the space." During that time, after
18 consulting with Meade and getting her approval, he responded to client needs, including
19 attending meetings for TFPFG in Boston, Massachusetts and State College, Pennsylvania. Deane
20 continued to receive his full compensation from TPFPG during this time.

21 18. On November 17, 2018, Deane contacted Meade who asked him to submit a
22 counter proposal to the November 14 offer. Deane sent Meade an email response to her request
23 on November 18, 2018.

1 19. On December 7, 2018, Nick Scalzo, Meade and Deane agreed to meet on
2 December 11 and 12 to discuss a future role for Deane at TPFPG. They met on December 11 and
3 12 in Fort Lauderdale, Florida.

4 20. On December 23, 2018, Nick Scalzo sent a second offer.

5 21. On December 26, 2018, Deane sent an email to Meade, Nick Scalzo, and
6 McClendon, rejecting TPFPG's latest offer.

7 22. The parties exchanged emails between December 28, 2018, and January 3, 2019,
8 regarding their respective positions.

9 23. Counsel for the parties communicated directly with each other beginning January
10 10, 2019.

11 24. In-house counsel for TPFPG emailed Deane's counsel on January 22, 2019,
12 informing him that Deane's employment with TPFPG was terminated effective that day.

13 25. Through the month ending August 31, 2020, Plaintiff has been paid \$484,367.77
14 in monthly termination payments.

15 26. Through the quarter ending June 30, 2020, Plaintiff has been paid \$96,951.02 in
16 quarterly termination payments.

17 27. Since July 1, 2018 TPFPG and Meade, Nick Scalzo, McClendon, and Gaetan
18 Scalzo were all officers at TPFPG and its affiliated companies.

19
20 **D. ISSUES OF LAW**

21 Plaintiff's Issues of Law

- 22 1. Did defendant TPFPG breach its employment agreement with plaintiff Kenneth I. Deane
23 by making termination payments in accordance with TPFPG's definition of the term
24 "procured?" If the Court so finds should it award Deane compensatory damages and
25 attorney fees and costs?
26

- 1 2. Did defendant TPFG act willfully and in violation of RCW 49.52.050 by making
2 termination payments to Kenneth I. Deane utilizing TPFG's definition of the term
3 "procured?" If the Court so finds should it award Deane exemplary damages and attorney
4 fees and costs?
5
- 6 3. Did defendant Megan Meade act willfully and in violation of RCW 49.52.050 by making
7 termination payments to Kenneth I. Deane utilizing TPFG's definition of the term
8 "procured?" If the Court so finds should it award Deane exemplary damages and attorney
9 fees and costs in accordance with RCW 49.52.070?
10
- 11 4. Did defendant Nicholas Scalzo act willfully and in violation of RCW 49.52.050 by
12 making termination payments to Kenneth I. Deane utilizing TPFG's definition of the term
13 "procured?" If the Court so finds should it award Deane exemplary damages and attorney
14 fees and costs in accordance with RCW 49.52.070?
15
- 16 5. Did defendant James McClendon act willfully and in violation of RCW 49.52.050 by
17 making termination payments to Kenneth I. Deane utilizing TPFG's definition of the term
18 "procured?" If the Court so finds should it award Deane exemplary damages and attorney
19 fees and costs in accordance with RCW 49.52.070?
20
- 21 6. Did defendant Gaetan Scalzo act willfully and in violation of RCW 49.52.050 by making
22 termination payments to Kenneth I. Deane utilizing TPFG's definition of the term
23 "procured?" If the Court so finds should it award Deane exemplary damages and attorney
24 fees and costs in accordance with RCW 49.52.070?
25
26

1 7. Is plaintiff Kenneth I. Deane entitled to an accounting to determine the accurate and
2 precise amount of the termination payment to which he is entitled under his employment
3 agreement?

4 8. How should the term “procure” be defined for purposes of determining termination
5 payments under Section 10 of the employment agreement?
6

7 **Defendants’ Proposed Alternative to Plaintiff’s inclusion of this sentence after**
8 **statements 2-6: “If the Court so finds should it award Deane exemplary damages**
9 **and attorney fees and costs in accordance with RCW 49.52.070?”**

10 9. If the Court finds any or all Defendants violated RCW 49.52.050, in accordance
11 with RCW 49.52.070, should Defendants be jointly and severally liable for attorneys’ fees
12 and costs and exemplary damages in an amount equal to the amount of unpaid wages and
13 not according to any multiplier as suggested by Plaintiff?

14 **Defendants’ Issues of Law**

- 15 1. Did Plaintiff breach his duty of loyalty?
16 2. Did Plaintiff breach his duty of confidentiality?
17 3. Did Plaintiff constructively resign from his position at TPGF?
18 4. If the Court finds that Plaintiff violated the non-solicitation provision of his employment
19 agreement, should the non-solicitation period be extended and/or should the Court enter
20 an injunction prohibiting future violations?
21 5. If the Court finds that Plaintiff violated the confidentiality provision of his employment
22 agreement, should Defendants be awarded damages, attorney’s fees and/or an injunction
23 prohibiting future violations?
24 6. If the Court finds that Plaintiff violated the duty of loyalty provision of his employment
25 agreement, should Defendants be awarded damages and attorney’s fees?
26

7. If the Court finds that Plaintiff constructively resigned, should Defendants be awarded damages, attorney's fees and/or a declaration that TPFG is relieved from its obligations to make any further termination payments under the employment agreement?

E. Expert Witnesses

1. On behalf of Plaintiff:

C. Frederick DeKay, Ph.D.
6313 N.E. 194th Street
Kenmore, WA 98028
(425) 478-4790
Plaintiff's economic damages

2. On behalf of Defendant:

Arik Van Zandt
Alvarez & Marsal Valuation Services, LLC
1111 Third Ave., Suite 2450
Seattle, WA 98101
Plaintiff's economic damages

F. Other Witnesses

1. On behalf of Plaintiff:

(a) Will likely testify:

Name	Address	Nature of testimony:
Plaintiff Kenneth Deane	c/o: Jon H. Rosen The Rosen Law Firm 705 2nd Avenue, Suite 1200 Seattle, WA 98104	Personal and work history; Employment Agreement; Termination; Damages
Scott Friel	16708 X Street Omaha, NE 68135	Deane's value and accomplishments at TPFG; Employment Agreement; Defendants' willfulness; Damages
Sylvain Templeman	237 Shannon Dr. SE Bainbridge Island, WA 98110	Deane's value and accomplishments at TPFG; Employment Agreement; Defendants' willfulness; Damages

Jill Dildine	261 140 th Ave. NE Bellevue, WA 98005	Deane's value and accomplishments at TPFPG; Employment Agreement; Defendants' willfulness; Damages
Brian McGinnis	3030 N. Rocky Point Dr. W. Suite 700 Tampa, FL 33607	Deane's value and accomplishments at TPFPG and procurement of investor clients
Carlos Rodriguez	3030 N. Rocky Point Dr. W. Suite 700 Tampa, FL 33607	Deane's value and accomplishments at TPFPG and procurement of investor clients
Jason Luhan	The Pacific Financial Group 11624 S.E. 5 th St., Suite 100 Bellevue, WA 98005	Defendant TPFPG's development of its definition of "procured." Defendants object to Mr. Luhan testifying at trial. He is General Counsel for TPFPG, and therefore, his communications with his client are protected by attorney-client privilege. To the extent Plaintiff intends to ask him about his communications with Mr. Rosen, those questions likely implicate the attorney-client privilege, and create a situation by which Mr. Rosen becomes a witness as well.
Melissa McNeill	19031 Carsonwood Ave. Deephaven, MN 55391	Deane's value and accomplishments at TPFPG and Defendants' willfulness.
Jennifer Rowe (deposition designation)	8914 Northeast 39 th St. Kirkland, WA 98034	Research and analysis of TPFPG's investor client database to determine if any account closures were due to the alleged conduct of plaintiff. Defendants object to Ms. Rowe being presented through deposition testimony rather than live testimony.

Defendant Jim McClendon (deposition designation)	c/o: David W. Silke Nicole E. Demmon Michael C. Tracy Gordon Rees Scully Mansukhani, LLP 701 5th Ave., Suite 2100 Seattle, WA 98104	Defendant McClendon's knowledge and role in determining the amounts of termination payments for plaintiff Ken Deane and his knowledge regarding the economic losses of TPFPG attributed to the alleged conduct of plaintiff Deane.
Defendant Gaetan Scalzo (deposition designation)	c/o: David W. Silke Nicole E. Demmon Michael C. Tracy Gordon Rees Scully Mansukhani, LLP 701 5th Ave., Suite 2100 Seattle, WA 98104	Defendant Scalzo's knowledge and role in determining the amounts of termination payments for plaintiff Ken Deane and his knowledge regarding the economic losses of TPFPG attributed to the alleged conduct of plaintiff Deane.

(b) May testify:

Name	Address	Nature of testimony:
Kenneth Gregg	687 Palos Verde Dr. Satellite Beach, FL 32937	Deane's value and accomplishments at TPFPG and procurement of investor clients.
David Lieberman	32 Bayberry Drive Mahwah, NJ 07430	Employment and business negotiations with plaintiff; contacts with Brian McGinnis and Carlos Rodriguez.
Michael Lieberman	Advisors Capital Management 10 Wilsey Square, #200 Ridgewood, NJ 07430	Employment and business negotiations with plaintiff; business of Advisors Capital Management .
Monique Nuetzel	The Pacific Financial Group 11624 SE 5 th Street, Suite 100 Bellevue, WA 98005	Processing the termination of Ken Deane, the authenticity of documents maintained by TPFPG in Mr. Deane's personnel file, her responsibilities as the custodian of personnel and human resources records, her knowledge of actions taken by

		TPFG as a result of conduct of defendant Nick Scalzo.
		Defendants object to this late named witness. Plaintiff disclosed Ms. Neutzel for the first time on October 10, 2020, well-after the discovery cutoff and after transmitting his pretrial statement.

2. On behalf of Defendants:

(a) Will likely testify:

Name	Address	Nature of testimony:
Plaintiff Kenneth Deane	c/o: Jon H. Rosen The Rosen Law Firm 705 2nd Avenue, Suite 1200 Seattle, WA 98104	Facts and circumstances surrounding his employment; his resignation from employment; his claims, allegations, and alleged damages; solicitation of TPFG referral sources; retention and dissemination of confidential TPFG information; Plaintiff and ACM's "joint venture"
Defendant Megan Meade	c/o: David W. Silke Nicole E. Demmon Michael C. Tracy Gordon Rees Scully Mansukhani, LLP 701 5th Ave., Suite 2100 Seattle, WA 98104	Facts and circumstances surrounding Plaintiff's employment; Plaintiff's resignation from employment; Plaintiff's claims, allegations, and alleged damages; TPFG's policies, practices, and procedures; TPFG's damages
Defendant Nick Scalzo	c/o: David W. Silke Nicole E. Demmon Michael C. Tracy Gordon Rees Scully Mansukhani, LLP 701 5th Ave., Suite 2100 Seattle, WA 98104	Facts and circumstances surrounding Plaintiff's employment; Plaintiff's resignation from employment; Plaintiff's claims, allegations, and alleged damages; TPFG's policies, practices, and procedures; TPFG's damages

Defendant Jim McClendon	c/o: David W. Silke Nicole E. Demmon Michael C. Tracy Gordon Rees Scully Mansukhani, LLP 701 5th Ave., Suite 2100 Seattle, WA 98104	Facts and circumstances surrounding Plaintiff's employment; Plaintiff's resignation from employment; Plaintiff's claims, allegations, and alleged damages; TPGF's policies, practices, and procedures.
Defendant Gaetan Scalzo	c/o: David W. Silke Nicole E. Demmon Michael C. Tracy Gordon Rees Scully Mansukhani, LLP 701 5th Ave., Suite 2100 Seattle, WA 98104	Facts and circumstances surrounding Plaintiff's employment; Plaintiff's resignation from employment; Plaintiff's claims, allegations, and alleged damages; TPGF's policies, practices, and procedures.
Jill Dildine	c/o: David W. Silke Nicole E. Demmon Michael C. Tracy Gordon Rees Scully Mansukhani, LLP 701 5th Ave., Suite 2100 Seattle, WA 98104	Plaintiff's termination payments; damages; TPGF's policies, practices, and procedures.
Brian McGinnis	Serve and Protect Financial 13156 Spring Hill Dr. Spring Hill, FL 34609	Plaintiff's solicitation of TPGF referral sources and role at TPGF.
Michael Lieberman (deposition designation)	Advisors Capital Management, LLC 10 Wilsey Square, Suite 200 Ridgewood, NJ 07450	Defendants' counterclaims
ACM (David Lieberman) (deposition designation)	Advisors Capital Management, LLC 10 Wilsey Square, Suite 200 Ridgewood, NJ 07450	Defendants' counterclaims

(b) May testify:
None at this time.

G. Exhibits


See enclosed exhibit list.

H. Actions by the Court

1. The case is scheduled for a bench trial before the Court beginning on October 26, 2020, at 9:00 A.M.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 26th day of October, 2020.



The Honorable Marsha J. Pechman
United States District Judge

DATED: October 22, 2020

Respectfully submitted by:

The Rosen Law Firm

By: /s/ Jon Howard Rosen

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Attorney for Plaintiff Kenneth I. Deane

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By: /s/ David W. Silke

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Attorneys for Defendants:

Pacific Financial Group, Inc.; Megan P. Meade;
Nicholas B. Scalzo; James C. McClendon and
Joan A. McClendon; and Gaetan T. Scalzo and
Sherrie Scalzo

No.	Date	Description	Dep. Exhibit No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. reserve objection if offered by Def.
JOINT TRIAL EXHIBITS							
1		Pacific Holdings Group Managing Members (Bates No. TPF 000864)	1	X			
2		Employment Agreement (Bates Nos. Deane/TPFG -00001-00009)	3	X			
3	6/15/18	Email from Meade to Templeman and Deane re: Plans going forward (Bates Nos. Deane/TPFG 00010-00011)	4	X			
4	11/14/18	Email from Meade to Deane re: Ken's Offer Letter (attaching Ken Deane Deal Points) (Bates Nos. Deane/TPFG 00012-00014)	5	X			
5	12/23/18	Email from Scalzo to Deane re: New Comp Worksheet (Memo of Understanding on New Position for Ken Deane) (Bates Nos. Deane/TPFG 00019-00022)	6	X			
6	11/18/18	email from Deane to Meade re: Plan for 2019 (attachment: East Division for 2019) (Bates Nos. Deane/TPFG 00015-00016)	7	X			
7	12/23-25/18	Email string between Deane, Scalzo, Meade, McClendon re: No Comp Worksheet	8	X			
8	12/29/18	Email from Meade to Deane re: New Comp Worksheet (Bates No. Deane/TPFG 00024)	9	X			

9		Texts: Scalzo/Meade/Deane (Bates Nos. Deane-TPFG 002327-02333)		X			
10		Texts: Scalzo/Deane (Bates Nos. Deane-TPFG 002334-002338)			X Duplicate of DEX 246. Relevance and prejudicial as to December 12 texts. Should be redacted. (ER 401 – 403) Character evidence (FRE 404)		
11		Texts: Meade/Deane (Bates Nos. Deane-TPFG 002339-002343)		X			
12	1/3/19	Email from Meade to Deane re: New Comp Worksheet (Bates No. TPF 017885-17891)		X			
13	10/29/18	Email from Scalzo to Meade re: edit please (attaching letter to Ken) (Bates Nos. TPF 000019-000023)	12		X Relevance (FRE 401-402) Prejudicial (FRE 403) Character evidence (FRE 404)		
14		Text messages :Scalzo/Meade/Deane (Bates Nos. Deane/TPFG 00028-00039)	13		X RE 28-29 Relevance (FRE 401-402) Prejudicial (FRE 403) Character evidence (FRE 404)		
15		Text messages: Meade/Deane (Bates Nos. TPF 013448-013472)	117	X			
16		Termination Checklist (Bates No. TPF 000537)	19		X Relevancy (FRE 401-402) Hearsay (FRE 801 - 805)		
17	1/10-24/19	Email string between Luhan and Rosen re: Termination of Deane (Bates Nos. Deane-TPFG 002625-002637)	20		X Settlement (FRE 408) Relevance (FRE 401-402) Hearsay (FRE 801 - 805)		
18	6/11/14	Letter from Meade to Deane (Bates No. TPF 000296)	21		X Settlement (FRE 408) Relevance (FRE 401-402)		

					Hearsay (FRE 801 - 802) Character evidence (FRE 404)		
19	1/10/19	Letter from Rosen to Meade re: Termination of Ken Deane	22	X			
20		Text messages - Deane/Templeman (Bates Nos. Deane/TPFG 000400- 000448)	24	X	X Hearsay as to parts (FRE 801-802)		
21		Text Messages – Scalzo/Meade/Deane (Bates Nos. Deane-TPFG 002267- 002271)		X	X Duplicate of PEX 227		
22		Text Messages – Scalzo/Deane (Bates Nos. Deane-TPFG 002272-002276)			X Duplicate of DEX 226		
23		Text Messages – Meade/Deane (Bates Nos. Deane-TPFG 002277-002279)		X	X Duplicate of DEX 225		
24	12/1/17	Letter from Meade to Deane (Bates Nos. TPFG 000 (illegible))	59	X			
25	6/2018	Spreadsheet (Bates Nos. Deane/TPFG- 002250-002251)	60		X Relevance (FRE 401-402)		
26	6/18-9/18	Spreadsheet (Bates Nos. Deane/TPFG- 002252-002253)	61		X Relevance (FRE 401-402)		
27	1/5/17- 10/18/19	Payroll Register for Ken Deane (Bates Nos. TPFG 000865-000871)	62	X			
28		Spreadsheet (Bates Nos. TPFG 017066-017070)	63		X Relevance (FRE 401-402)		
29		Payroll data (Bates Nos. TPFG 017050-017065)	64		X Relevance (FRE 401-402)		
30		Summary Monthly Commissions Allocation (Bates Nos. TPFG 000935 & various bates nos.)	65		X Duplicate of DEX 305		

31	1/23/19	Email and attachment (showing Q4 commissions) from Mladenova to Deane (Bates Nos. Deane/TPFG-002236-002239)	66		X Relevance (FRE 401-402)		
32	12/8/18	Email and attachment (monthly commissions) from Mladenova to Deane (Bates Nos. Deane/TPFG-002234-002236)	67		X Relevance (FRE 401-402)		
33		TPFG Summary Monthly Commissions Allocation (Bates No. Deane/TPFG-002254)	68		X Relevance (FRE 401-402)		
34		Photograph of Spreadsheet (NTF as of 10.31.18 by Account) (3 pages - no bates nos.)	69	X			
35	2/4/19	Email and attachment (monthly commissions for Dec. 2018 and corrected Q4 commissions) (Bates Nos. Deane/TPFG-002240-002244)	70	X			
36	11/7/07	Facsimile transmission from Dildine to Purcell re: Background Check (Bates Nos. TPFG 000123-000127)	71		X Relevance (FRE 401-402)		
37		Summary of Predictive Index® Results (Bates Nos. TPFG 000112-000114)	72		X Relevance (FRE 401-402)		
38	4/1/08	Email and attachment, from McKenzie to Deane re: Enrollment Notice (Bates Nos. TPFG 000135-000140)	73		X Relevance (FRE 401-402)		
39	7/28/08	Email string re: Ken took his series 65 today... (Bates No. TPFG 000153)	74		X Relevance (FRE 401-402)		
40		Form U4, Kenneth Deane (Bates Nos. TPFG 000471-000482)	75		X Relevance (FRE 401-402)		

41		Form U5, Kenneth Deane (Bates Nos. TPGF 000526-000530)	76		X Relevance (FRE 401-402) Hearsay (FRE 801 - 802)		
42		Letter of Intent (Bates No. TPGF 000103)	77	X			
43		Draft Employment Agreement (Bates Nos. TPGF 000333-000340)	78	X			
44		Draft Employment Agreement (Bates Nos. TPGF 000341-000347)	79	X			
45		Draft Employment Agreement (Bates Nos. TPGF 000356-000364)	80	X			
46		Draft Employment Agreement (Bates Nos. TPGF 000348-000355)	81	X			
47		Draft Employment Agreement (Bates Nos. TPGF 000382-000390)	82	X			
48		Draft Employment Agreement (Bates Nos. TPGF 000115-000122)	83	X			
49	5/20/08-6/5/08	Email string between Meade, Deane and Dildine re: LJC Cusano, Esq.; Agreement review (Bates Nos. TPGF 000156-000158)	84		X Relevance (FRE 401-402) Hearsay (ER 801-802)		
50		Email string: Meade/Frost (Bates Nos. Deane-TPGF 00053-00055)	116		X Relevance (FRE 401-402) Hearsay (ER 801-802)		
51	1/26/08	Email string between Deane, Dildine and Meade re: Commissions – Final (Bates Nos. TPGF 000175-000176)	85		X Relevance (FRE 401-402) Confusion (FRE 403)		
52	3/5/12	Letter from Meade to Deane re: amendment to schedule A of contract (Bates No. TPGF 0002??)	86	X			

53	3/7/12	Email and attachment (amendment to Schedule A), from Dildine to Deane re: Amendment to Contract (Bates Nos. TPF 000173-000174)	87	X			
54	8/1/11	Letter from Meade to Deane re: Darrell's contract (Bates No. TPF 000179)	88	X			
55	2/29/12	Email from Dildine to Deane re: Monthly commissions to Wholesalers for Mutual Fund Income (Bates No. TPF 000172)	89		X Relevance (FRE 401-402) Confusion (FRE 403)		
56		Draft Employment Agreement (April 1, 2017) (Bates Nos. TPF 000315-000323)	90	X			
57	6/15-20/18	Email string between Deane and Dildine re: Draft of National Commissions Paid Out (Bates Nos. TPF 000???-000??? – 5 pages)	91	X			
58	6/27/18	Email string between Dildine, Scalzo, Meade re: Confirmation of Repayment of Scott's Salary (Bates Nos. TPF 000535-000536)	92	X			
59	6/30/18	Email from Deane to Dildine re: repayment of SF (Bates No. TPF 000429)	93	X			
60		Employment Agreement (redacted) (Bates Nos. TPF 017083-017091)	94	X			
61		Defendant Nicholas Scalzo's Supplemental Answers and Objections to Plaintiff's First Set of Interrogs and Requests for Production	95		X Relevance (FRE 401-402) Not the final supplement.		
62		Pacific Holdings, LLC (WA) Chart (Bates No. TPF 013419)	97	X			

63		Draft Employment Agreement (Bates Nos. Deane/TPFG 00056-00064)	100	X			
64		Text messages: Meade/Deane (Bates No. Deane/TPFG 00067)	103		X Not best evidence/document. DEX 227 is a more complete version		
65	11/14/18	Email with attachment (offer letter) from N. Scalzo to Meade and Molloy re: Ken Deane Deal Points (Bates Nos. TPFG 000016-000018 and 000013-000015)	104	X			
66		Text messages: Scalzo/Meade/Deane (Bates Nos. Deane/TPFG 00068-00071)	105		X Duplicate of PEX 14 (FRE 403) Relevance (FRE 401-402) Prejudicial (FRE 403) Character evidence (FRE 404)		
67	11/15/18	Email from Meade to Deane dated 11/15/18 re: Ken's Offer Letter (Bates Nos. 017204-017206)		X Typo should be 204-205			
68		Text messages: Meade/N. Scalzo/J. McClendon/G. Scalzo (Bates Nos. TPFG 013482-013483)	107	X			
69		W-2 Forms (2018 and 2019) and 1099-Misc. 2019 – Kenneth I. Deane (Bates Nos. Deane-TPFG 002703-002705)	108		X Relevance (FRE 401-402) Produced 10/14/20		
70		Text messages: Scalzo/Deane (Bates No. Deane/TPFG 00050)	109		X Duplicative (FRE 401-402)		
71	2/5-8/19	Email string between Luhan and Rosen re: Ken Deane – phone and laptop (Bates Nos. Deane-TPFG 002638-002655)	110		X Settlement (FRE 408)		

72		Email string between Luhan and Rosen (Bates Nos. Deane-TPFG 002656-002657)			X Settlement (FRE 408) Relevance (FRE 401-402) Lacks foundation, legal conclusions, and opinions of non-witness.		
73		Email string between Luhan and Rosen (Bates Nos. Deane-TPFG 002658-002661)			X Settlement (FRE 408)		
74		AT&T Mobility Statement (Bates Nos. AT&T_GRSM 000529 & 000566)	136	X			
75		Calls with Brian McGinnis (Bates Nos. Deane-TPFG 002699-002702)	137			X Authenticity. Creator unknown; accuracy cannot be verified (FRE 901)	
76		Text messages: McGinnis/Deane (Bates Nos. Deane/TPFG 001845-001855)	138	X			
77		Text messages: McGinnis/Deane (Bates No. Deane/TPFG 002299)	139	X			
78		Text messages: McGinnis/Scalzo (Bates Nos. TPF 017175-017185)	140	X			
79	7/17/20	Letter from C. Frederick DeKay, Ph.D. to Jon Rosen: Preliminary Economic Damages Analysis for Mr. Ken Deane (subject to revision before trial) (Bates Nos. Deane-TPFG 002662-002698)				X Hearsay (FRE 801-803) Authenticity (FRE 901) Produced version has pen markings Relevance (FRE 401-402) including improper and inadmissible expert opinions. Foundation (FRE 602; 402)	
80	10/30/18	Email from Ken Deane to Megan Meade (Bates No. Deane-TPFG 002316)		X			

81	11/2/18	Email chain between Ken Deane, Megan Meade and Nick Scalzo (Bates No. Deane/TPFG 002314)		X			
82		Employment Agreement effective July 1, 2008 between The Pacific Financial Group, Inc. and Scott Friel (Bates Nos. Deane-TPFG 002317-2326)			X Relevance (FRE 401-402)		
83		Severance Agreement and General Release entered into between The Pacific Financial Group, Inc., Pacific Financial Group, LLC and ProTools, Inc. and Scott Friel – June/July 2019) (Bates Nos. Deane/TPFG 002259-2266)			X Relevance (FRE 401-402) Prejudicial, confusion (FRE 403) Confidentiality of agreement (3(c))		
84		Texts: Rodriguez/Deane (Bates Nos. Deane-TPFG 002280-002298)			X Relevance (FRE 401-402) Hearsay (FRE 801-802)		
85		Texts: Bosch/Hamm/Deane (Bates Nos. Deane-TPFG 002300-002304)			X Relevance (FRE 401-402) Hearsay (FRE 801-802)		
86		Texts: Bosch/Deane (Bates Nos. Deane-TPFG 002305-002312)			X Relevance (FRE 401-402) Hearsay (FRE 801-802)		
87		Deane calendars – April 2011-January 2019 (Bates Nos. Deane-TPFG 001859-001952)			X Relevancy outside of June 2018-January 2019 (FRE 401-402)		
88		Texts: Scalzo/Deane (Bates Nos. Deane-TPFG 002706-002711)			X Relevance (FRE 401-402)		
89		Texts: Templeman/Deane (Bates Nos. Deane-TPFG 002712-002715)			X Hearsay (FRE 801-802) Duplicative (FRE 401-402)		

90		Ken Deane Commission Calculation paid July 1 for May 2019 – monthly (Bates Nos. Deane-TPFG 002906-002963)		X			
91		Ken Deane Commission Calculation paid March 2019 for January 31 – monthly (Bates Nos. Deane-TPFG 002716-002755)		X			
92		Ken Deane Commission Calculation paid April 1 for February 2019 – monthly (Bates No. TPFG 000872)		X			
93		Ken Deane Commission Calculation paid April 26 for March 2019 – Quarter 1 (Bates Nos. Deane-TPFG 002756-002766)		X			
94		Ken Deane Commission Calculation paid May 1 for March 2019 – monthly (Bates Nos. Deane-TPFG 002767-002846)		X			
95		Ken Deane Commission Calculation paid June 3 for April 2019 – monthly (Bates Nos. Deane-TPFG 002847-002905)		X			
96		Ken Deane Commission Calculation paid July 31 for June 2019 – Quarter 2 (Bates Nos. TPFG 001332-001341)		X			
97		Ken Deane Commission Calculation paid August 1 for June 2019 – monthly (Bates Nos. Deane-TPFG 002964-003021)		X			
98		Ken Deane Commission Calculation paid September 1 for July 2019 – monthly (Bates Nos. Deane-TPFG 003022-003076)		X			

99		Ken Deane Commission Calculation paid October 1 for August 2019 – monthly (Bates Nos. Deane-TPFG 003077-003133)		X			
100		Territory Commission Worksheet for Ken Deane paid October 31 2019 – Quarter 3 (Bates Nos. Deane-TPFG 003134-003143)		X			
101		Ken Deane Commission Calculation paid November 1 for September 2019 – monthly (Bates Nos. Deane-TPFG 003144-003199)		X			
102		Ken Deane Commission Calculation paid December 2 for October 2019 – monthly (Bates Nos. Deane-TPFG 003200-003254)		X			
103		Ken Deane Commission Calculation paid January 2, 2020 for November 2019 – monthly (Bates Nos. Deane-TPFG 003255-003308)		X			
104		Territory Commission Worksheet for Ken Deane paid January 31, 2020 for Quarter 4 2019 (Bates Nos. Deane-TPFG 003309-003317)		X			
105		Ken Deane Commission Calculation paid February 3 for December 2019 – monthly (Bates Nos. Deane-TPFG 003318-003371)		X			
106		Ken Deane Commission Calculation – January 2020 (Bates Nos. Deane-TPFG 003372-003424)		X			
107		Ken Deane Commission Calculation paid for February 2020 – monthly (Bates Nos. Deane-TPFG 003425-003475)		X			

108		Territory Commission Worksheet – Quarter 1, 2020 for Ken Deane (Bates Nos. Deane-TPFG 003476-003484)		X			
109		Ken Deane Commission Calculation – April 2020 (Bates Nos. Deane-TPFG 003485-003535)		X			
110		Ken Deane Commission Calculation – August 2020 (Bates Nos. Deane-TPFG 003536-003583)		X			
111		Ken Deane Commission Calculation – July 2020 (Bates Nos. Deane-TPFG 003584-003631)		X			
112		Ken Deane Commission Calculation – June 2020 (Bates Nos. Deane-TPFG 003632-003681)		X			
113		Ken Deane Commission Calculation – March 2020 (Bates Nos. Deane-TPFG 003682-003733)		X			
114		Ken Deane Commission Calculation – May 2020 (Bates Nos. Deane-TPFG 003734-003783)		X			
115		Territory Commission Worksheet – Quarter 2, 2020 for Ken Deane (Bates Nos. Deane-TPFG 003784-003792)		X			
116		Updated economic loss report for Ken Deane (Bates Nos. Deane-TPFG 003793-003834)				X Hearsay (FRE 801-803) Authenticity (FRE 901) Produced version has pen markings Relevance (FRE 401-402) including improper and inadmissible expert opinions. Foundation (FRE 602; 402)	

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
200	2007.11.02	Pacific Financial Group Inc. Code of Ethics (TPFG 000030)			FRE 402 FRE 403		
201	2008.02.15	Email w/attachment from Megan Meade to Ken Deane re Sales Representative Contract (Deane_TPFG 000300-310)		X			
202	2008.04.00	Draft Employment Agreement with redline edits (TPFG 000391-000400)		X			
203	2008.04.00	Draft Employment Agreement with redline edits (TPFG 000401-000410)		X			
204	2011.08.01	Letter to Kenneth Deane from Megan Meade re Darrell Szymanski (TPFG 000298)		X			
205	2012.03.12	March 5 letter from Megan Meade to Kenneth Deane re amendment to contract (TPFG 000314)		X			
206	2016.12.05	Email from Ken Deane forwarding to his personal email re Here is my signed document Offer Letter to Dan Messmer (TPFG 017237-238)			FRE 402 FRE 403		
207	2017.02.05	Email from Ken Deane forwarding to his personal email re Breakdown - AUM by Rep State and Region Only as of 12/31/16 (TPFG 017234-235)			FRE 402 FRE 403		
208	2017.08.28	CLS Investments LLC Instructions			FRE 402		

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		for the Solicitor Application and Agreement (Deane_TPFG 001549-001556)			FRE 403		
209	2018.00.00	2018 Expense Reports (TPFG 000541-000635)					FRE 402 FRE 403
210	2018.01.12	Pacific Holdings Group Employee Handbook (TPFG 014313-014339)				FRE 402 FRE 403	
211	2018.02.01	Absolute Capital Asset Allocator Fund, Absolute Capital Defender Fund Prospectus (Deane_TPFG 001565 - 001567)			FRE 402 FRE 403		
212	2018.03.24	Letter to Kenneth Deane from Megan Meade re total compensation schedule dated 12/1/17 signed by Ken Deane on 3/24/18 (TPFG 000300-000302)		X			
213	2018.04.17	Jim McCormick text message exchanges with Ken Deane [4/17/18 -1/8/19] (Deane_TPFG 000461-000469)	37		FRE 402 FRE 403		
214	2018.04.17	Jim McCormick & Melanie Dickinson text message exchange with Ken Dean [4/17/18 – 11/1/18] (Deane_TPFG 000475-000477)			FRE 402 FRE 403		
215	2018.04.18	Erik Sherman text message exchange with Ken Deane [4/18/18 – 9/19/19] (Deane_TPFG	39				FRE 402 FRE 403

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		000479-000490)					
216	2018.04.19	Melanie Dickinson text message exchange with Ken Deane [4/19/18 – 10/19/18] (Deane_TPFPG 000470-000474)			FRE 402 FRE 403		
217	2018.04.20	Robert Coleman text message exchange with Ken Deane [4/20/18 – 9/17/19] (Deane_TPFPG 000491-000500)	42		FRE 402 FRE 403		
218	2018.04.23	Erik Sussman text message exchange with Ken Deane [4/23/18 – 11/21/19] (Deane_TPFPG 000616-646)	54		FRE 402 FRE 403		
219	2018.04.25	Pat Carroll text message exchange with Ken Deane [4/25/18 – 1/11/20] (Deane_TPFPG 000502-000543)			FRE 402 FRE 403		
220	2018.04.25	Ed Bosch Jr. text message exchange with Ken Deane [4/25/18 – 5/3/18] (Deane_TPFPG 000575)			FRE 402 FRE 403		
221	2018.05.03	Investment Management Agreement (Deane_TPFPG 001557-001564)			FRE 402 FRE 403		
222	2018.05.10	Dustin Mikkelsen text message exchange with Ken Deane [5/10/18 – 2/14/19] (Deane_TPFPG 000578-000582)			FRE 402 FRE 403		
223	2018.05.22	J Bivens text message to Ken			FRE 106		

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		Deane email address (Deane_TPGF 000567)			FRE 402 FRE 403		
224	2018.06.11	Glenn Wiggle text message exchange with Ken Deane [6/11/18 – 11/25/19] (Deane_TPGF 000584-000588)	56		FRE 402 FRE 403		
225	2018.06.15	Withdrawn					
226	2018.06.17	Withdrawn					
227	2018.06.18	Withdrawn					
228	2018.06.19	Sylvain Templeman text message exchange with Ken Deane (Deane_TPGF 000046-048)		X			
229	2018.08.03	Carlos Rodriguez text message exchange with Ken Deane [8/3/18 – 12/18/19] (Deane_TPGF 000449-000459)	57	X			
230	2018.08.29	Email from Ken Deane forwarding to his personal email re Charlotte SDBA list (TPFG 017212-233)			FRE 402 FRE 403		
231	2018.09.01	AdvisorOne Funds Prospectus (Deane_TPGF 001600-001603)			FRE 402 FRE 403		
232	2018.09.15	Chart of Retirement Plans by State (Deane_TPGF 001791-001828)			FRE 402 FRE 403		
233	2018.10.10	Andrew Evans text message exchange with Ken Deane [10/10/18 – 7/16/19] (Deane_TPGF 000566)			FRE 106 FRE 402 FRE 403		
234	2018.10.30	Quantified Funds Prospectus (Deane_TPGF 001773-001776)			FRE 402 FRE 403		

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235	2018.10.30	Quantified Funds Summary Prospectus (Deane_TPFPG 001777-001778)			FRE 402 FRE 403		
236	2018.10.30	Email from Ken Deane to Megan Meade re Savings (Deane_TPFPG 002313-314)		X			
237	2018.11.01	HCM Prospectus (Deane_TPFPG 001656-001658)			FRE 402 FRE 403		
238	2018.11.15	Email from Scott Friel to Ken Deane re contract termination calculations. (Deane_TPFPG 000263-264)		X			
239	2018.11.19	Michael Lieberman text messages with Ken Deane between Michael Lieberman and Ken Deane [11/19/18-6/21/19] (Deane_TPFPG 000154-162)		X			
240	2018.11.28	Megan Meade text messages with Ken Deane [11/26/18 – 11/28/18] (Deane_TPFPG 000072-073)		X			
241	2018.12.00	December 2018 Outlook Calendar for Ken Deane (Deane_TPFPG 000399)			FRE 106		
242	2018.12.08	Megan Meade, Ken Deane and Nick Scalzo text message exchange [12/5-12/8/18] (TPFG 013422-013428)		X			
243	2018.12.11	Megan Meade, Ken Deane and Nick Scalzo text message		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		exchange re FL meeting [12/8-12/11/18] (TPFG 013429-013434)					
244	2018.12.11	Megan Meade, Ken Deane and Nick Scalzo text message exchange re FL meeting [12/11-12/12/18] (TPFG 013435-013441)		X			
245	2018.12.12	Megan Meade and Kenneth Deane text message exchange [11/23-12/12/18] (TPFG 013462-013468)		X			
246	2018.12.12	Withdrawn					
247	2018.12.13	Email from Adam Kornegay to Kenneth Deane re Pro-Forma question (Deane_TPFG 001232-235)		X			
248	2018.12.17	David Lieberman text messages with Ken Deane [12/17/18-7/2/19] (Deane_TPFG 000137-153)		X			
249	2018.12.18	Email exchange between Dane Neiman and Kenneth Deane re numbers and some question (Deane_TPFG 001242-001342)		X			
250	2018.12.21	Nick Scalzo text message exchange with Ken Deane [12/21/18-1/11/19] (Deane_TPFG 000276)		X			

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251	2018.12.21	Email from Jeff Provence to Kenneth Deane, Danny Neiman re numbers and some questions (PFS_GRSM 000438-439)		X			
252	2018.12.26	Megan Meade, Ken Deane and Nick Scalzo text message exchange re FL meeting [12/15-12/26/18] (TPFG 013442-013447)		X			
253	2018.12.26	Megan Meade text message exchange with Kenneth Deane [12/19-26/18] (TPFG 013469-013474)		X			
254	2018.12.27	Megan Meade text message exchange with Kenneth Deane [12/26-12/27/18] (TPFG 013475-013481)		X			
255	2018.12.28	Email from Ken Deane forwarding Megan Meade 11/29 email re meetings and expenses (Deane_TPFG 000398)		X			
256	2018.12.31	Ken Deane Outlook Calendars for July 2018 - December 2018 (Deane_TPFG 000278-283)			FRE 106		
257	2018.12.31	Spreadsheet of Kenneth Deane Accounts as of 12.31.18 (TPFG 000654-000863)		X			
258	2019.01.00	Ken Deane 2019 Activity Report (calendar) (Deane_TPFG 000277)		X			

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259	2019.01.00	TPFG Employee Handbook (Deane_TPFG 000347-367)			FRE 402 FRE 403 FRE 404 FRE 801		
260	2019.01.06	Email discussion from Ken Deane to David Lieberman re Items for Monday (ACM 000341-343)		X			
261	2019.01.06	Email discussion between Ken Deane and David Lieberman re Items for Monday (Deane_TPFG 000088-090)		X			
262	2019.01.07	Dan Neiman text message exchange with Ken Deane [1/7/19 – 6/18/19] (Deane_TPFG 001236-001237)		X			
263	2019.01.08	Meeting invite from Ken Deane to David Lieberman re July 12 th meeting (ACM 000257)		X			
264	2019.01.09	Email from Kenneth Deane to Jeff Provence, Danny Neiman re numbers and some questions (PFS_GRSM 000371-380)		X			
265	2019.01.10	Email from Ken Deane forwarding to his personal email re John Mints should be East TX (TPFG 017236)			FRE 402 FRE 403		
266	2019.01.11	John Adams, Pat Carroll & Tyler Shumaker text message exchange with Ken Deane (Deane_TPFG 000547-000549)			FRE 402 FRE 403		

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
267	2019.01.14	Email from Ken Deane to David Lieberman re update (ACM 000346-347)		X			
268	2019.01.15	Email from David Lieberman to Ken Deane re offer details (Deane_TPGF 000093-095)		X			
269	2019.01.16	Email from David Lieberman to Ken Deane providing introduction to other partners (Deane_TPGF 000096)		X			
270	2019.01.16	Email from Jeff Provence to Kenneth Deane re Cell died I'll call you in a few (PFS_GRSM 000043)		X			
271	2019.01.18	Acknowledgement re receipt of Employee Handbook dated January, 2019 (Deane_TPGF 000314)		X			
272	2019.01.23	Scott Friel text message exchange with Ken Deane [1/23/19-2/11/19] (Deane_TPGF 000267-268)		X			
273	2019.01.24	Email from Kenneth Deane to Jeff Provence, Dan Neiman re almost clear (PFS_GRSM 000023)		X			
274	2019.01.24	Email response from Jeff Provence to Kenneth Deane, Danny Neiman re almost clear (PFS_GRSM 000230)		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
275	2019.01.28	Email from Ken Deane to David Lieberman email re cash flow projections (ACM 000012-000023)		X			
276	2019.01.28	Jeff Provence text messages with Ken Deane [1/28/19 – 3/14/19] (Deane_TPGF 001238-001241)		X			
277	2019.01.28	Email discussion between Jon Rosen and Jason Luhan re Termination of Ken Deane (TPFG 017246-259)		X			
278	2019.01.29	Email from David Lieberman to Ken Deane re spreadsheet (Deane_TPGF 000098-099)		X			
279	2019.01.29	Email from Jeff Provence to Kenneth Deane re Funds (Deane_TPGF 001523)		X			
280	2019.01.29	Email with attachment from Kenneth Deane to Jeff Provence re management agreement (PFS_GRSM 000109-128)		X			
281	2019.01.30	Email with attachment from Kenneth Deane to Jeff Provence re numbers and some questions (PFS_GRSM 000096-097)		X			
282	2019.01.31	Email from David Lieberman to Ken Deane re strategy/marketing info (Deane_TPGF 000100-101, 1977-979, 1955-961, 1981-989)		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
283	2019.01.31	Email string between Ken Deane and Peter Monks re Thank You and Next Steps			FRE 402 FRE 403		
284	2019.02.01	Absolute Capital Asset Allocator Fund, Absolute Capital Defender Fund Prospectus (Deane_TPFG 001568-001599)			FRE 402 FRE 403		
285	2019.02.04	Email from Pavlina Mladenova to Kenneth Deane re Monthly Commissions (Deane_TPFG 002240-002244)		X			
286	2019.02.04	Withdrawn					
287	2019.02.05	Email from David Lieberman to Ken Deane, Marc Kocur re times (Deane_TPFG 000102-104, 1968-976)		X			
288	2019.02.08	Email string between Ken Deane and David Lieberman re email for Schwab (ACM 000025-000027)		X			
289	2019.02.11	Email string between Ken Deane and David Lieberman re items for this week (ACM 000033-000036)		X			
290	2019.02.11	Email string between Ken Deane and David Lieberman re items for this week (Deane_TPFG 000105-108)		X			
291	2019.02.11	Email from Ken Deane to David Lieberman re weather (Deane_TPFG 000109)		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
292	2019.02.12	Withdrawn					
293	2019.02.20	Email with attachment from Kenneth Deane to Jeff Provence, Danny Neiman re expenses (PFS_GRSM 000064-069)		X			
294	2019.02.21	Email with attachment from Ken Deane to David Lieberman re cash flow (ACM 000051-000076)	32	X			
295	2019.02.21	Email string between Ken Deane and David Lieberman re cash flow file (ACM 000077-000078)		X			
296	2019.02.21	Email from Ken Deane to David Lieberman re cash flow (Deane_TPFG 000110)		X			
297	2019.02.21	Email from Ken Deane to Jeff Provence, Danny Neiman re expenses (PFS_GRSM 000263-264)		X			
298	2019.02.22	Email string between Ken Deane and Michael Lieberman, David Lieberman re next week (ACM 000082-000083)		X			
299	2019.02.22	Email string between David Lieberman and Ken Deane re model (Deane_TPFG 000111-117)		X			
300	2019.02.23	Email from Kenneth Deane to Jeff Provence re Funds (Deane_TPFG 001524-001526)		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
301	2019.02.24	Email string between Ken Deane and David Lieberman re attached (ACM 000087-000090)		X			
302	2019.02.25	Email string between Ken Deane and David Lieberman re salary and expenses (ACM 000098-000101)	123	X			
303	2019.02.26	Email string between Ken Deane and Michael Lieberman, David Lieberman re next week (ACM 000102-000106)	141	X			
304	2019.02.26	Email with attachment from Ken Deane to David Lieberman re printing and to do (ACM 000112-000134)		X			
305	2019.02.28	The Pacific Financial Group Summary Monthly Commissions Allocations. [2/28/19 – 7/31/2020] (TPFG 000872, 000935-001320, 17274-847, 17889-930, 17935)				FRE 801 FRE 802 FRE 901	
306	2019.03.01	Email with attachment from David Lieberman to Ken Deane re contract (ACM 000367-377)		X			
307	2019.03.01	Email response from David Lieberman to Ken Deane re contract (Deane_TPFG 000119-120)		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
308	2019.03.03	Email response from Ken Deane to David Lieberman re contract (ACM 000135-000136)		X			
309	2019.03.03	Saul Simmons text message exchange with Ken Deane [3/3/19 – 11/7/19] (Deane_TPGF 000556-000559)	43	X			
310	2019.03.06	Email from Kenneth Deane to Jeff Provence re Fixed ETF Holdings (PFS_GRSM 000081-083)		X			
311	2019.03.07	Email string between Ken Deane and David Lieberman re attorney introduction (ACM 000137-000138)	131	X			
312	2019.03.09	Meeting invitation from Ken Deane to David Lieberman re meeting at ACM on March 15 th (ACM 000139)		X			
313	2019.03.14	Email from Ken Deane to David Lieberman re Friday' s meeting (Deane_TPGF 000121-122)		X			
314	2019.03.15	Email from David Lieberman to Ken Deane re thoughts on this? (ACM 000378)	142	X			
315	2019.03.20	Email from David Lieberman to Ken Deane re action items summarized (Deane_TPGF 000123-124)		X			
316	2019.03.22	Dan Neiman & Jeff Provence text		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		message exchange with Ken Deane (Deane_TPGF 001208)					
317	2019.03.29	CLS Investments Form ADV Part 2A Brochure (Deane_TPGF 001110-001170)		X			
318	2019.03.29	Flexible Plan Investments Ltd Form ADV Part 2A Brochure (Deane_TPGF 001171-001207)		X			
319	2020.06.30	The Pacific Financial Group Summary Quarterly Commissions Allocations for period 1/1/19-6/30/20 (TPFG 001321-001341, 17848-884)		X			
320	2019.04.02	Scott Friel text message exchange with Ken Deane [4/2/19 – 7/30/19] (Deane_TPGF 002258)		X			
321	2019.04.08	Meeting invitation from Ken Deane to David Lieberman re meeting on April 9 th (ACM 000142)		X			
322	2019.04.11	Email from Jon Rosen to Jason Luhan re Ken Deane's monthly payment summary (Deane_TPGF 000380-382)		X			
323	2019.04.12	Email from Kenneth Deane to Jeff Provence, Jeff Waclawik re Introduction		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		(Deane_TPGF 001527-001529)					
324	2019.04.15	Email string between Ken Deane and David Lieberman re Ken/Dave Meeting (ACM 000144-000146)		X			
325	2019.04.15	Meeting invitation from Ken Deane to David Lieberman re May 3 rd meeting (ACM 000147)		X			
326	2019.04.15	Email from David Lieberman to Michael Lieberman, Ken Deane re Map (ACM 000382-383)		X			
327	2019.04.15	Email from Michael Lieberman to David Lieberman, Ken Deane re Map (ACM 000384-385)	143	X			
328	2019.04.15	Email from Jeff Waclawik to Justin Scanlon, Jeff Provence, Kenneth Deane, David Lieberman re Distributor Introduction for Advisors Capital Management (Deane_TPGF 001343-001348)	33	X			
329	2019.04.17	Email with attachment from Ken Deane to David Lieberman re financials (ACM 000148-000152)		X			
330	2019.04.17	Email string from Ken Deane to David Lieberman re financials		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		(ACM 000153-000157)					
331	2019.04.18	Email string from Ken Deane to David Lieberman re financials (ACM 000158-000164)	124	X			
332	2019.04.19	Email string from Ken Deane to David Lieberman re financials (ACM 000165-000171)		X			
333	2019.04.23	Email discussion between Jon Rosen and Jason Luhan re Deane v Pacific Financial Group, et al. (TPFG 017260-264)		X			
334	2019.05.13	Email from David Lieberman to Ken Deane re additional Schwab questions (Deane_TPFG 000131-133)		X			
335	2019.05.16	Howard Capital Management Inc. Form ADV Part 2A Brochure (Deane_TPFG 000934-000952)		X			
336	2019.05.29	Meeting invitation from Ken Deane to David Lieberman re May 30 th meeting (ACM 000172)		X			
337	2019.05.29	Email from David Lieberman to Ken Deane re Ken Deane (ACM 000386-387)		X			
338	2019.05.31	Email string from Ken Deane to David Lieberman re info (ACM 000173-000175)		X			
339	2019.05.31	Vikkie Bach Fink text message	46	X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		exchange with Ken Deane (Deane_TPGF 000615)					
340	2019.06.03	Email string from Ken Deane to David Lieberman re engagement letter (Kenneth Deane) (Deane_TPGF 000134)	47	X			
341	2019.06.03	Letter from Michael Burwick to Kenneth Deane re Proposed Solicitor Arrangement and LLC Formation (Deane_TPGF 001962-001967)		X			
342	2019.06.04	Email from Ken Deane to Dan Neiman, Jeff Provence re Meeting in June (Neiman Funds_GRSF 000011-013)		X			
343	2019.06.06	Email string from Ken Deane to David Lieberman re ownership structure of LLC (ACM 000180-184)		X			
344	2019.06.10	Email with attachment from David Lieberman to Ken Deane re contract attached (ACM 000390-400)		X			
345	2019.06.11	Email response from Ken Deane to David Lieberman re updated contract (ACM 000185-000186)		X			
346	2019.06.11	Email from David Lieberman to		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		Ken Deane re updated contract (ACM 000401-411)					
347	2019.06.12	Email response from Michael Bilotta to David Lieberman re possible acquisition (ACM 000291-000293)	133		FRE 402 FRE 403 FRE 802		
348	2019.06.12	Email string from David Lieberman to Michael Bilotta re possible acquisition (ACM 000299-000301)			FRE 402 FRE 403 FRE 802		
349	2019.06.13	Email response from Michael Bilotta to David Lieberman re info summary for The Pacific Financial Group (ACM 000288-000290)			FRE 402 FRE 403 FRE 802		
350	2019.06.17	Email with attachment from Ken Deane to David Lieberman re stock structure (ACM 000187-000189)	134	X			
351	2019.06.17	Email from Michael Bilotta to David Lieberman re Quick FYI (ACM 000286-000287)			FRE 402 FRE 403 FRE 802		
352	2019.06.17	Email from Ken Deane to David Lieberman re stock structure (Deane_TPGF 000135-136, 1980)		X			
353	2019.06.17	Email from Ken Deane to Dan Neiman, Jeff Provence re Meeting in June (Neiman Funds_GRS 000014-		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		017)					
354	2019.06.21	Email string from Ken Deane to David Lieberman, Christina Aiello re onboarding (ACM 000192-000195)		X			
355	2019.06.25	Email response from Ken Deane to David Lieberman, Christine Aiello re resume (ACM 000196-000197)		X			
356	2019.06.25	Email with attachment from Ken Deane to David Lieberman, Christine Aiello re info (ACM 000198-000199)		X			
357	2019.06.26	Email with attachment from Ken Deane to David Lieberman re wholesaler employment agreement (ACM 000200-000211)		X			
358	2019.06.26	Email response from Ken Deane to David Lieberman re background check (ACM 000212-000213)		X			
359	2019.06.27	Email response from Ken Deane to David Lieberman re fyi (ACM 000214-000215)		X			
360	2019.06.27	Email from Michael Bilotta to David Lieberman re TPFPG (ACM 000278-000279)			FRE 402 FRE 403 FRE 802		
361	2019.06.27	Email from Michael Bilotta to David Lieberman			FRE 402 FRE 403		

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		(ACM 000280-000281)			FRE 802		
362	2019.06.27	Email string from Michael Bilotta to David Lieberman re have you had the chance to call Pacific? (ACM 000282-000285)			FRE 402 FRE 403 FRE 802		
363	2019.06.27	Email string from David Lieberman to Michael Bilotta re have you had the chance to call Pacific? (ACM 000305-000306)			FRE 402 FRE 403 FRE 802		
364	2019.06.27	Email with attachment from David Lieberman to Ken Deane re employment agreement (ACM 000412-423)		X			
365	2019.06.27	Email with from David Lieberman to Ken Deane re most recent version (ACM 000424-435)		X			
366	2019.06.28	Email string from Ken Deane to David Lieberman re fyi (ACM 000218-000220)		X			
367	2019.06.28	Email from Ken Deane to David Lieberman mails re stock structure (ACM 000223-000224)		X			
368	2019.06.28	Email string from Ken Deane to David Lieberman re most recent version (ACM 000225-000228)		X			
369	2019.06.28	Email with attachment from Ken		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		Deane to David Lieberman re KD employment agreement (ACM 000229-000238)					
370	2019.06.28	Email from Ken Deane to David Lieberman re KD employment agreement (ACM 000239-000241)		X			
371	2019.07.01	Email from Ken Deane to David Lieberman re from attorney - confirming dates? (ACM 000244-000245)		X			
372	2019.07.01	Email from David Lieberman to Ken Deane re Section 2.7 language (ACM 000436-437)		X			
373	2019.07.01	Email from David Lieberman to Ken Deane re nearly finished version (ACM 000438-448)		X			
374	2019.07.03	Email from Ken Deane to David Lieberman forwarding Edits to 2.7 (ACM 000246-000256)	125	X			
375	2019.07.08	Email string from David Lieberman to Michael Bilotta re The Pacific Financial Group (ACM 000302-000304)			FRE 402 FRE 403 FRE 802		
376	2019.07.16	Andrew Evans text message exchange with Ken Deane (Deane_TPGF 000229)			FRE 402 FRE 403		

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
377	2019.07.17	Michael Goldberg text message exchange with Ken Deane [7/17 – 30/19] (Deane_TPFG 000546)			FRE 402 FRE 403		
378	2019.07.29	Email string from Ken Deane to David Lieberman re ACM (ACM 000269-000274)		X			
379	2019.07.29	Email from Ken Deane to Stephen Potts, Peter Wilmot re ACM Fixed Income (Deane_TPFG 000199-200)		X			
380	2019.07.30	Tim Murphy text message exchange with Ken Deane [7/30/19 – 8/16/19] (Deane_TPFG 000561)	52	X			
381	2019.08.02	Ken Deane Employment Agreement (ACM 000001-000010)	126	X			
382	2019.08.06	Advisors Capital Management Investment Information (Deane_TPFG 002114-200)		X			
383	2019.08.09	Email string from Ken Deane to E Brian Smith re ACM meeting w/Ken Deane (Deane_TPFG 000214-217)		X			
384	2019.08.11	Email from Ken Deane to David Swartz, Timothy Murphy re From Ken Deane ACM (Deane_TPFG 000205-206, 1961)		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
385	2019.08.13	Email response from Ken Deane to Bryan Bruce re voice message (Deane_TPFG 000224-225)		X			
386	2019.08.14	Email string from Ken Deane to Jim Allston re ACM Meeting with Ken Deane (Deane_TPFG 000226-228)		X			
387	2019.08.14	Ken Deane text message to David Swartz (Deane_TPFG 000560)		X			
388	2019.08.15	Email from Ken Deane to Brian Smith re Sept 20 lunch (Deane_TPFG 000218-219)		X			
389	2019.08.22	Email string from Ken Deane to Adam Handler re Meeting August 26 (Deane_TPFG 000207-209)		X			
390	2019.08.23	Email from Ken Deane to Dan Randall re Advisors Capital Management (Deane_TPFG 000197-198, 2072-093)		X			
391	2019.08.23	Email string from Ken Deane to Steve Belloli re Sept/Oct (Deane_TPFG 000210-213)		X			
392	2019.08.23	Email from Ken Deane to B Bruce, D Toeppe re Advisors Capital Management (Deane_TPFG 000220-221, 2072-		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		113)					
393	2019.08.26	Rob Hudson text message exchange with Ken Deane (Deane_TPGF 000545)	55	X			
394	2019.08.28	Email string from Kenneth Deane to Jeff Provence, Dan Neiman re Update (Deane_TPGF 001530-001532)		X			
395	2019.08.28	Email string from Ken Deane to Jeff Provence, Dan Neiman re update (Neiman Funds_GRS 000018)		X			
396	2019.09.01	AdvisorOne Funds Prospectus (Deane_TPGF 001604-001655)		X			
397	2019.09.06	Email from Ken Deane to Jeff Provence, Dan Neiman re update (Neiman Funds_GRS 000029-032)		X			
398	2019.09.13	Email with attachment from Ken Deane to B Bruce and D Topper re another impressive piece to the team (Deane_TPGF 000196, 2047)		X			
399	2019.09.27	Email from Ken Deane to Steve Belloli re Partners (Deane_TPGF 000194)		X			
400	2019.09.27	Email from Ken Deane to Davie Toeppe, Bryan Bruce re Belloli and meeting		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		(Deane_TPGF 000222-223)					
401	2019.10.09	Email from Ken Deane to Peter Wilmot, Stephen Potts re Additional fixed income PM - Meeting (Deane_TPGF 000201-202, 2144)		X			
402	2019.10.16	Email from Ken Deane to Dave Sorenson, William Neubaur re ACM update and recert commentaries (Deane_TPGF 000190-193, 2049-050, 2052-053)		X			
403	2019.10.28	Email string from Ken Deane to Dave Sorenson, Ann Morocco re Advisor intro (Deane_TPGF 000186-189)		X			
404	2019.10.31	Quantified Funds Summary Prospectus (Deane_TPGF 001779-001786)		X			
405	2019.11.01	HCM Prospectus (Deane_TPGF 001659-001710)		X			
406	2019.11.03	ACM Due Diligence Seminar Brochures (ACM 000315-000337)	135	X			
407	2019.11.05	Email from Ken Deane to David Toeppe, Bryan Bruce re Confirming 11:30 - November 13 (Deane_TPGF 000195)		X			
408	2019.11.08	Email from Kenneth Deane to Jeff		X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		Provence re Vacation (PFS_GRSM 000489)					
409	2019.11.12	Email with attachment from Kenneth Deane to Jeff Provence re Ken Deane (PFS_GRSM 000084-095)			FRE 402 FRE 403 FRE 501 FRE 502 FRE 801 FRE 802		
410	2019.11.27	ADP Paycheck stubs for 8/7/19-11/27/19 (Deane_TPGF 000075-087)			FRE 402 FRE 403		
411	2019.12.06	John Adams text message exchange with Ken Deane [12/6/-17/19] (Deane_TPGF 000553-000554)		X			
412	2019.12.17	Carlos Rodriguez, Brian McGinnis text message exchange with Ken Deane [12/13-17/19] (Deane_TPGF 001856-001858)		X			
413	2019.12.24	Payroll Summary for 8/7/19 – 12/24/19 (ACM 000011)			FRE 402 FRE 403		
414	2019.12.30	Ken Deane text messages to Tim Murphy (Deane_TPGF 002245)			FRE 402 FRE 403		
415	2020.01.07	Melissa Crouch text message exchange with Ken Deane (Deane_TPGF 002247-248)			FRE 402 FRE 403		
416	2020.01.07	Subpoena to Produce Documents	119	X			

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		in a Civil Action to Advisors Capital Management, LLC					
417	2020.01.15	Christ Ciocia text message exchange with Ken Deane (Deane_TPGF 000550)			FRE 402 FRE 403		
418	2020.01.22	Ed Bosch Jr. text message exchange with Ken Deane (Deane_TPGF 002249)		X			
419	2020.02.07	Email from Ken Deane re Dan Neiman, Jeff Provence re Call with ACM (Neiman Funds_GRS 000042-044)			FRE 402 FRE 403		
420	2020.02.08	Email with attachment from Kenneth Deane to Jeff Provence, Claire Comerford re AC Fund Information as discussed (PFS_GRS 000017-021)			FRE 402 FRE 403		
421	2020.02.20	Email from Claire Comerford to Ken Deane, Dan Neiman, Jeff Provence re AC Fund information as discussed (Neiman Funds_GRS 000094-099)			FRE 402 FRE 403		
422	2020.02.20	Email string from Ken Deane to Dan Neiman, Claire Comerford, Jeff Provence re AC Fund information as discussed (Deane_TPGF 002344-352)			FRE 402 FRE 403		

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
423	2020.02.28	Email from Ken Deane to Jeff Provence, Dan Neima, Claire Comerford re business plan (Deane_TPGF 002354-368)			FRE 402 FRE 403		
424	2020.02.28	Email from Kenneth Deane to Jeff Provence, Dan Neiman, Claire Comerford re business plan (PFS_GRSM 000024-038)			FRE 402 FRE 403		
425	2020.02.28	Email with attachments from Kenneth Deane to Jeff Provence, Dan Neiman, Claire Comerford re business plan (native version)			FRE 402 FRE 403		
426	2020.03.12	Email with attachment from Jeff Provence to Kenneth Deane re for discussion (PFS_GRSM 000073-075)			FRE 402 FRE 403		
427	2020.03.12	Email from Ken Deane to Jeff Provence, Claire Comerford re PowerPoint for Board (Deane_TPGF 002371-377)			FRE 402 FRE 403		
428	2020.03.13	Email with attachment from Jeff Provence to Kenneth Deane, Claire Comerford, Dan Neiman re Development Agreement (PFS_GRSM 000054-063)			FRE 402 FRE 403		
429	2020.03.27	Email with attachment from Jeff Provence to Kenneth Deane, Claire Comerford re Development Agreement			FRE 402 FRE 403		

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		(PFS_GRSM 000044-053)					
430	2020.03.27	Email from Kenneth Deane to Jeff Provence re Form 15-C Affirmation (PFS_GRSM 000288-291)			FRE 402 FRE 403		
431	2020.03.27	Email string from Ken Deane to Jeff Provence re Form 15-C Affirmation (Deane_TPGF 002379-382)			FRE 402 FRE 403		
432	2020.03.31	ACM Private Small/Mid Cap Composite Fund Information (Deane_TPGF 002383-384)			FRE 402 FRE 403		
433	2020.05.00	Deane Marketing Expenses Spreadsheets for January 2019 - May 2020 (TPFG 017124 - 140)		X			
434	2020.05.13	Employment Agreement executed by Megan Meade and Logan Cummings (TPFG 017075-082)			FRE 106		
435	2020.05.15	Letter from Brian McGinnis to Megan Meade (TPFG 017141-143)	118		FRE 801 FRE 802		
436	2020.05.20	Email with attachment from Jeff Provence to Claire Comerford, Kevin Strauss, Kenneth Deane re Signed Development Agreement (PFS_GRSM 000460-467)			FRE 402 FRE 403		
437	2020.05.20	Email from Jeff Provence to Ken			FRE 402		

No.	Date	Description	Dep. Exh. No.	Admissibility Stipulated	Authenticity Stipulated; Admissibility Disputed	Authenticity and Admissibility Disputed	Pltfs. Reserve objection if offered by Def.
		Deane, Claire Comerford re Prospectus (PFS_GRSM 000132)			FRE 403		
438	2020.05.31	Account Data for Ken Deane's Division for January 21, 2019 - May 31, 2020 (TPFG 017159-174, 017885-886, 17888)		X			
439	2020.06.01	Email string from Ken Deane to Jeff Provence re structure (Deane_TPFG 002404-405)			FRE 402 FRE 403		
440	2020.06.17	Email string from Ken Deane to Jeff Provence, Claire Comerford re Additional info (Deane_TPFG 002406-408)			FRE 402 FRE 403		
441	2020.06.25	Text message string between Carlos Rodriguez and Ken Deane 8/3-6/25/20 (Deane_TPFG 002280-298)		X			
442	2020.07.23	Claire Comerford LinkedIn Profile	144		FRE 402 FRE 403 FRE 801 FRE 802		
443	2020.08.07	Declaration of Records Custodian (Neiman Funds_GRSM 000001-003)		X			
444	2020.09.17	Email with attachment from Jeff Provence to Claire Comerford, Ken Deane, Parker Bridgeport re Prospectus and SAI			FRE 402 FRE 403 FRE 801 FRE 802		

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		(Deane_TPGF 002420-501)					
445	2020.09.23	Email string from Ken Deane to Jeff Provence re Comments and info on Prospectus and SAI (Deane_TPGF 002505-508)			FRE 402 FRE 403 FRE 801 FRE 802		
446	2020.10.06	Email string from Jeff Provence to Claire Comerford, Ken Deane, Parker Bridgeport re Draft Prospectus and SAI (Deane_TPGF 002537-539)			FRE 402 FRE 403 FRE 801 FRE 802		
447		Deane Equity Fund Pro-Forma Operating Statements (Deane_TPGF 001226-001228)		X			
448		Pro-Forma Assumptions re Deane Funds (Deane_TPGF 001229-001230)		X			
449		Deane Funds Cash Flow Projections for New Fund Organization (Deane_TPGF 001231)		X			
450		Withdrawn					
451		Gemini Funds - Creating Your Mutual Fund Article (Deane_TPGF 001543-001544)			FRE 801 FRE 802		
452		Fidelity Article - "An advisor's guide to Fidelity BrokerageLink" (Deane_TPGF 001787-001790)			FRE 801 FRE 802		
453		Flexible Plan Investments - "Manage your clients' current	35		FRE 801 FRE 802		

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		workplace retirement accounts" article (Deane_TPGF 001829-001831)					
454		ACM Business overview for Fidelity (Deane_TPGF 001832-001833)	36	X			
455		United Fund Solutions - Launching a Mutual Fund article (Deane_TPGF 001834-001839)			FRE 801 FRE 802		
456		Structure of ACM Compensation for Kenneth Deane (Deane_TPGF 001840-001844)	34	X			
457		\$2 billion fund AUM acquisition (Deane_TPGF 001953-001954)	30	X			
458		Withdrawn		X			
459		Cash Flow Projections (Deane_TPGF 001990-001994)			FRE 402 FRE 403		
460		Mutual Fund Assumptions (Deane_TPGF 001995)			FRE 402 FRE 403		
461		KDA Equity Fund Projections (Deane_TPGF 001996-001997)			FRE 402 FRE 403		
462		Cash Flow Goals (Deane_TPGF 001998-002011)			FRE 402 FRE 403		
463		KDA Equity Fund Projections (Deane_TPGF 002012-002013)			FRE 402 FRE 403		

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464		Cash Flow Projections (Deane_TPFG 002014-002029)			FRE 402 FRE 403		
465		KDA Equity Fund Projections (Deane_TPFG 002030-002031)			FRE 402 FRE 403		
466		Mutual Fund Assumptions (Deane_TPFG 002032-002033)			FRE 402 FRE 403		
467		Cash Flow Goals (Deane_TPFG 002034-002046)			FRE 402 FRE 403		
468		Account ID table (TPFG 000873-000934)				FRE 901 FRE 801 FRE 802	
469		Q1 2019 – Q3 2020 Master - KD Territories Spreadsheets (TPFG 017206 – 210, 017931, 17933)		X			
470		01 Master Territory Reassignment - revised all accounts spreadsheet (TPFG 017239)		X			
471		2018 Q4 - 2019 Q1 Region Audit Spreadsheet (TPFG 017240)		X			
472		Eastern Division Compare - All Accounts Spreadsheet				FRE 901 FRE 801	

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		(TPFG 017241)				FRE 802	
473		Monthly Expenses Spreadsheet (TPFG 017242)				FRE 901 FRE 801 FRE 802	
474		Text messages between Megan Meade, Nick Scalzo and Ken Deane (Deane_TPFG 000030 - 039)			FRE 105		
475		Advisors Capital Management Investment Kit (51 pages)		X			
476		AT&T Records of Communications between Ken Deane and Robert Coleman (AT&T_GRSM 000068-69, 90-91, 106, 572, 575, 591, 593, 617, 664-665, 737, 782-783)		X			
477		AT&T Records of Communications between Ken Deane and Andrew Evans (AT&T_GRSM 000247)		X			
478		AT&T Records of Communications between Ken Deane and Dave Sorenson (AT&T_GRSM 000251, 288, 878-879, 902, 927, 930, 1008)		X			
479		AT&T Records of Communications between Ken		X			

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		Deane and Glenn Wiggle (AT&T_GRSM 253, 267, 489, 492, 554, 680, 695, 785, 826, 848, 879-880, 896, 914-915, 936, 974, 1002)					
480		AT&T Records of Communications between Ken Deane and James McCormack (AT&T_GRSM 000292, 390, 535, 540-541, 549, 557, 559-563, 588, 600-601, 713, 783, 821-822, 835, 843, 846, 851, 894, 899, 915, 917, 968, 972, 974, 1047-048)		X			
481		AT&T Records of Communications between Ken Deane and Michael Lieberman (AT&T_GRSM 000450, 467, 479-481, 485-486, 496, 500, 504, 516, 518-519, 525, 529, 534, 540-541, 545, 550, 594, 600, 612, 617)		X			
482		AT&T Records of Communications between Ken Deane and Eric Sherman (AT&T_GRSM 000459, 534-535, 599-600)		X			
483		AT&T Records of Communications between Ken Deane and Peter Monks (AT&T_GRSM 000774-775)		X			

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484		AT&T Records of Communications between Ken Deane and Wilmot Potts (AT&T_GRSM 000779)		X			
485		AT&T Records of Communications between Ken Deane and Brian Smith (AT&T_GRSM 000831, 901, 938- 939, 1040)		X			
486		Q2-Q3 2020 Annuity Resigns Spreadsheet (TPFG 017934)				FRE 801 FRE 802 FRE 901 FRE 1002	
487- 500		Reserved for Demonstrative and Impeachment					